

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

DONALD J. STRABLE,	)	Civil Action No.: 6:06-cv-3541-RBH
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER</b>
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

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Plaintiff, proceeding *pro se*, brought this action against the State of South Carolina. Because the Plaintiff is proceeding *pro se*, all pretrial proceedings in this matter were automatically referred to United States Magistrate Judge William M. Catoe under 28 U.S.C. § 636(b) and Local Rule of Civil Procedure 73.02(B)(e). DSC.

This action was docketed by the Clerk's office as an action under 42 U.S.C. § 1983. On April 3, 2007, Magistrate Judge Catoe issued his Report and Recommendation [Docket Entry #15], recommending dismissal of the Plaintiff's complaint without prejudice and without issuance and service of process. On April 6, 2007, Plaintiff filed a letter with the court insisting that this case was "a Federal Tort Claim against the State of South Carolina." [Docket Entry #16]. On April 11, 2007, Plaintiff timely filed objections to the Magistrate Judge's Report and Recommendation. [Docket Entry #17]. Before this court had the opportunity to rule on the Magistrate Judge's Report and Recommendation, on April 17, 2007, the Plaintiff appealed the Report and Recommendation to the Fourth Circuit Court of Appeals. [Docket Entry #19]. On August 20, 2007, the Fourth Circuit issued its judgment and mandate dismissing the Plaintiff's appeal; therefore, this case is ripe for decision. [Docket Entry #26].

### **Standard of Review**

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of those portions of the report and recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1).

The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982).

### **Discussion**

The Magistrate Judge recommended that Plaintiff's case be dismissed for several reasons. First, Plaintiff failed to timely comply with the court's Proper Form Order of December 22, 2006.<sup>1</sup> [Docket Entry #4]. Second, the State of South Carolina is entitled to Eleventh Amendment immunity from this lawsuit. *See Kentucky v. Graham*, 473 U.S. 159, 167 n.14; *Ballenger v. Owens*, 352 F.3d 842, 844 (4th Cir. 2003); *Pullings v. Jackson*, C/A No. 2:07-912-MBS, 2007 WL 1726528, at \*3 (D.S.C. June 13, 2007). Third, to the extent

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<sup>1</sup> The Magistrate Judge stated that since 1994 the Plaintiff has filed 32 lawsuits in federal court and should therefore be familiar with the court's procedures and the consequences for failing to comply with the court's Orders.

Plaintiff attempts to sue the State of South Carolina under the Federal Tort Claims Act, South Carolina cannot be a defendant in a lawsuit brought under the Federal Tort Claims Act. *See* 28 U.S.C. §§ 2671 and 2674.

The Magistrate Judge also recommended that the court deny the Plaintiff's motion to proceed *in forma pauperis*. First, in his recitation of the procedural history of this case, the Magistrate Judge stated that, in spite of a court Order requiring him to do so, the Plaintiff failed to timely file a request or motion to proceed *in forma pauperis*. Later in his discussion, the Magistrate Judge noted that Plaintiff's complaint is frivolous and vexatious. Plaintiff has previously attempted to sue the State of South Carolina and in that lawsuit was informed of the State's immunity under the Eleventh Amendment. *See Strable v. State of South Carolina*, C.A. No.: 6:04-717-TLW-WMC. Nevertheless, the Plaintiff attempts to sue the State of South Carolina in this lawsuit.

The 32 federal lawsuits filed by the Plaintiff since 1994, the filing of multiple frivolous lawsuits, and the Plaintiff's procedural actions in this case, i.e. appealing the Report and Recommendation before the District Court could issue a ruling, clearly demonstrate a manipulation of the court system and a lack of respect for the judicial process. The Plaintiff has continuously wasted judicial resources and this court sees no reason why the Plaintiff should be granted *in forma pauperis* status when to do so would only encourage him to file more frivolous lawsuits without paying a filing fee. Plaintiff's actions have wasted substantially more resources than the mere Three-hundred fifty (\$350.00) dollar filing fee required for initiating a civil action. The court concludes that Plaintiff should be assessed the filing fee for bringing this action and his motion to proceed *in forma pauperis* is denied.

The court has reviewed the record and agrees with the Magistrate Judge's analysis and application of law to the facts of this case. The court has reviewed the Plaintiff's objections and finds that they are without merit.

**Conclusion**

For the reasons stated above and by the Magistrate Judge, the court overrules Plaintiff's objections and adopts the Report and Recommendation of the Magistrate Judge. This case is hereby **DISMISSED without prejudice** and without issuance and service of process.

Additionally, Plaintiff's [Docket Entry #9] motion for leave to proceed *in forma pauperis* is **DENIED**. Plaintiff shall be indebted to the federal government in the amount of Three-hundred fifty (\$350.00) dollars as a result of filing this case.

**IT IS SO ORDERED.**

August 24, 2007  
Florence, South Carolina

s/ R. Bryan Harwell  
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R. Bryan Harwell  
United States District Judge